

DOCKET NO. LLI-CV21-6026840-S : **SUPERIOR COURT**
TOWN OF HARTLAND : **J.D. OF LITCHFIELD**
vs. : **AT TORRINGTON**
MARK BRAULT, ET AL. : **MAY 25, 2023**

PLAINTIFF'S POST-HEARING REPLY BRIEF

The Plaintiff, the Town of Hartland ("Plaintiff" or the "Town"), hereby submits this Post-Hearing Reply Brief in response to the Defendants' May 16, 2023 Post-Trial Memorandum (Docket Entry No. 136.00).

I. INTRODUCTION

In their Reply Brief the Defendants' (i) misleadingly imply that the Plaintiff's case relies only on circumstantial evidence and (ii) chose to ignore the bulk of the evidence presented at trial and summarized in both the Plaintiff's Proposed Findings of Facts and Conclusions of Law (Docket Entry No. 131.00) and Post-Hearing Brief (Docket Entry No. 135.00). Instead, the Defendants yet again try to point their finger at two other alleged bear feeders to explain the bear behavior on and around the Braults' property. The Defendants' arguments are unsupported by the evidence and the science presented at trial.

II. REPLY TO DEFENDANTS' POST-TRIAL MEMORANDUM

1. The Plaintiff has presented both direct and circumstantial evidence of the Defendants' violations of the bear-feeding ordinance.

The Defendants seem to imply that the Plaintiff has only presented circumstantial evidence and its case is somehow weaker as a result. This is inaccurate in both respects. First, there is clear and direct evidence of Mr. Brault feeding bears – namely, a video showing him

doing exactly that. In addition, there is nothing inherently weaker about circumstantial evidence. As Connecticut courts have explained, “it does not diminish the probative force of the evidence that it consists, in whole or in part, of evidence that is circumstantial rather than direct” and “[t]he trier [of fact] may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical.” *State v. Jones*, 210 Conn. App. 249, 256–57 (2022) (citations omitted). The Plaintiff has presented both direct and circumstantial evidence, both of which demonstrate that it is more likely than not that the Defendants intentionally violated the Town’s bear feeding ordinance.

2. The evidence at trial established that other alleged bear feeders could not explain the bear sign on the Braults’ property.

Rather than confront the evidence of intentional bear feeding, the Defendants have again tried to place the blame on other alleged bear feeders claiming that the source of sunflower seeds in the bear scat near Mr. Brault’s property was the result of these other individuals. However, the uncontroverted testimony of the Town’s expert witness refuted this claim. Mr. Rego opined that the other alleged bear feeders lived too far away from the Braults’ property to be the source of sunflower seed in the scat:

Q. You've heard allegations that Ginny Apple and maybe Mike Mancino have been feeding bears sunflower seeds. In your expert opinion, with reasonable probability, could that explain the seeds in the scat that you’ve observed near Mr. Brault's property?

A. I think it’s very improbable. Those – those sites are a long distance from Mr. Brault’s property. Um, for – for bears to eat a mile away and then decide to travel, travel a mile to defecate, just is improbable.

(11/23/22, p. 27).¹

3. Bears were habituated *specifically* to Mr. Brault and eager to approach him.

The Defendants claim that the bears on Mr. Brault's property were merely unafraid of Mr. Brault and ignored him and imply that the bear's habituation was caused by other alleged bear feeders. The evidence, however, told a different story. The third video presented at trial showed the yearlings first approaching Mr. Brault (clearly not ignoring him) before he re-directed their attention to where he was shaking something near the ground. (Ex. 10-3). As Mr. Rego explained, the yearlings looked "eager" to get near Mr. Brault and were "extraordinarily comfortable" in his presence. (3/17/22, pp. 78-79). In Mr. Rego's expert opinion, the yearlings were habituated specifically to Mr. Brault and must, therefore, have been fed by him. (3/17/22, p. 79). It is reasonable and logical to conclude that such feeding was intentional.

4. The bird feeders are further evidence of intentional bear feeding.

The Defendants claim that bears were being unintentionally fed sunflower seeds on the Braults' property via spillage from bird feeders. Defendants' Post-Trial Memorandum, p. 2. These feeders were placed near the "bear box" – the enclosed seating area positioned where bears apparently frequented. (2/4/22, pp. 15-16; Ex. C-1).² It is reasonable and logical to conclude that placing these feeders, which admittedly spilled seeds and shells attracting bears, in an area where Nature Havens promoted the opportunity to see bears, was done to intentionally attract bears.

¹ Transcripts of trial testimony are identified by date and page number(s). Unless otherwise notes, relevant excerpts of trial testimony are included in the Appendix to the Plaintiff's Proposed Findings of Fact and Conclusions of Law.

² A copy of this transcript excerpt is included with **Exhibit A** attached hereto.


5. Both Dr. Munn and Mr. Brault were interested in bear feeding.

The Defendants claim that both Dr. Munn and Mr. Brault disavowed bear feeding on the Braults' property. There is no credible evidence to support this claim. Instead, the evidence is clear that Dr. Munn came to Hartland for the express purpose of feeding bears and, in fact, fed bears in Hartland prior to getting into business with Mr. Brault. (2/4/22, pp. 115-16).³ The evidence also discredited Mr. Brault's claim that he told Dr. Munn he was not interested in feeding bears, as Mr. Brault exchanged emails, with Dr. Munn's input, with DEEP personnel inquiring about diversionary bear feeding. (9/30/21, pp. 80-81, 84-87; Exs. 14, 15). It is reasonable and logical to conclude that going into business with a bear feeder and then inquiring about feeding bears supports the Plaintiff's claim that the Defendants were intentionally feeding bears.

III. CONCLUSION

As set forth above and in the Plaintiff's Proposed Findings of Facts and Conclusions of Law and Post-Hearing Brief, the evidence at trial more than adequately demonstrates that it is more likely than not that the Defendants intentionally fed bears.

THE PLAINTIFF,
TOWN OF HARTLAND,

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³ A copy of this transcript excerpt is included with **Exhibit A** attached hereto.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Reply Brief has or will immediately be sent via email on this 25th day of May, 2023 to the following:

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EXHIBIT A

LLI-CV21-6026840-S : SUPERIOR COURT
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TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JOHN D. MOORE, JUDGE

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1 come into the box while we sat there. People seemed to enjoy
2 that, having those at close proximity. So, again, the feeders
3 are strung from a wire between two very narrow trees that are,
4 um, virtually really not ideal for bears to climb up and almost
5 can't climb up, it's high enough where bears cannot reach them
6 and the, uh, food that's in the blind is surrounded by an
7 electric fence, which is a great deterrent for bears, so. As I
8 said before, I've taken, um, steps to -- to eliminate the bears
9 from purposely getting food. Now, do they get, you know, a
10 scrap here or there? Or can they smell the shucks, the shells,
11 that the birds drop on the ground? Well, sure they can.

12 Q Okay, so dovetailing into that in the top right corner,
13 can you tell me what we see there? This picture on the top
14 right?

15 A Okay. It's a bear underneath the feeders.

16 Q Okay, do you have any idea what that bear is doing?

17 A It's probably sniffing at the shucks and the shells that
18 have fallen on the ground.

19 Q Because the smell of the sunflower seeds would attract
20 the bears to that location; is that correct?

21 A Yeah. Well, even -- even the shells I would think would
22 -- it has a smell -- bears have a smell that's eight times
23 greater than a bloodhound, so there's not -- you're not gonna
24 hide anything from a bear, as far as smell.

25 Q And wouldn't seeds spill out of those feeders onto the
26 ground?

27 A Um, I wouldn't say -- I'm gonna answer that no. I'm

1 gonna answer that no, because birds are very, very -- if you
2 notice, there's very small holes in the bird feeders. It's
3 small enough so that even taking one seed out, it's not -- the
4 hole's not large enough for any spillage. And I've
5 experimented with the size of the hole. Um, they do spill, you
6 know, a few seeds, but not very many at all. So I'm gonna
7 say -- all right, yeah, I suppose they do, a few seeds, yeah,
8 they might spill.

9 Q Okay, and that would attract bears to near the bear
10 box, correct?

11 A I -- I imagine if they smelled it, yeah.

12 Q Well, I mean, we see one there, correct, right near the
13 bear box?

14 A Yeah, but I can't tell you whether there's seeds there
15 or just the shells there, I don't know.

16 Q Okay. But it's underneath the bird feeders, which have
17 seeds in them?

18 A Yeah. Umm-hmm.

19 Q Okay. All right.

20 ATTY. VEGLIANTE: I'm gonna take this exhibit
21 down, your Honor. I'm gonna pull up what has been
22 marked as, for ID only, as Plaintiff's Exhibit 41. I
23 realize now the numbering, we may have skipped a bunch
24 of numbers, but it's -- I'm sorry, I apologize, it's
25 been marked as Plaintiff's Exhibit 25.

26 THE COURT: Okay, so the bench book of proposed
27 exhibits you gave me last time ends at 23, so is this a

1 I think it sounds like counsel's asking me not to rely
2 on 5 through 7 inclusive, is that a fair statement, do
3 both counsel --

4 ATTY. VEGLIANTE: Yes. There are statements by
5 Dr. Munn which aren't hearsay, obviously, because
6 Dr. Munn is here, but I don't think we're gonna reach
7 those today. So but it's -- it's the statements by
8 others --

9 THE COURT: The parties that will not be
10 testifying?

11 ATTY. VEGLIANTE: Correct.

12 THE COURT: Okay. All right, so right now the
13 Court will agree, and, Attorney Williams, do you agree
14 to this approach, that I will not be relying on the
15 third-party statements that are found in 5 through 7?

16 ATTY. WILLIAMS: Yeah, that's agreeable, your
17 Honor.

18 THE COURT: Thank you.

19 ATTY. WILLIAMS: Subject to my attempting to get
20 them in, in some other way, but I'm not claiming that.

21 THE COURT: Sure, at this point in time.

22 ATTY. VEGLIANTE: Right, that sounds -- that
23 sounds like a good solution to me.

24 BY ATTY. VEGLIANTE:

25 Q All right, so, Dr. Munn, the photograph on the first
26 page that I have on the screen right now, it's captioned June
27 2018 photo at one of our test sites in Hartland, Connecticut.

1 So that's a photograph of a bear I see, obviously, correct?

2 A Yes, that's -- that's on Mr. Kawa's property. Kind of a
3 nice photo from one of our camera traps, uh-huh.

4 Q Okay. So that's on Mr. Kawa's property. And I see a
5 bear standing on a -- a steel tub, it looks like, correct?

6 A That's right, yeah.

7 Q And what's in that tub?

8 A Let's see, uh, pretty sure it was sunflower seed.

9 Q Okay. So why -- so your -- so is this one -- is this a
10 photograph of what you would call a diversionary feeding
11 experiment that you were performing on Mr. Kawa's property?

12 A Yes. But, I mean, it's a combination, because
13 diversionary feeding not only keeps bears away from roads, away
14 from houses, away from garbage cans, but it also is an
15 opportunity to view them in the forest instead of in garbage
16 cans and on roads and near houses, so.

17 Q Right.

18 A It's a combination, but, yes, this is -- this is a
19 diversionary feeding method that's been used also in a way that
20 can create jobs.

21 Q Right. So, in other words, it's a way to encourage
22 bears to be in an area for people to view them. Is that fair
23 to say?

24 A It's a way to encourage bears to be far away from where
25 they can cause trouble and in a specific location where they
26 can become useful.

27 Q And they become useful by being an attraction for

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C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Litchfield at Torrington, Connecticut, before the Honorable John D. Moore, Judge, on the 4th day of February, 2022.

Dated this 10th day of February, 2022, in Torrington, Connecticut.

A handwritten signature in blue ink, reading "Robin Mitchell", is written over a horizontal line.

Robin Mitchell
Court Recording Monitor